Sir: We, a minority of your Committee on Finance, to whom was referred,

House bill No. 3, A bill to be entitled "An Act making appropriation to defray the contingent expenses of the First Called Session of the Thirty-second Legislature of the State of Texas, convened July 31, 1911, by proclamation of the Governor, and declaring an emergency."

Have had the same under consideration and beg to report the same back to the Senate, with the recommendation that it do pass and be not printed.

JOHNSON,
MAYFIELD.

TWELFTH DAY.

Senate Chamber,
Austin, Texas,
Monday, Aug. 14, 1911.

The Senate met pursuant to adjournment, and was called to order by Lieutenant Governor Davidson.

Roll called, quorum being present, the following Senator answering to their names:

Adams.	McNealus.
Astin.	Meachum.
Bryan.	Murray.
Carter.	Paulus.
Cofer.	Peeler.
Collins.	Terrell, McLennan.
Greer.	Terrell, Wise.
Hudspeth.	Townsend.
Hume.	Vaughan.
Johnson.	Ward.
Kauffman.	Warren.
Lattimore.	Watson.
Mayfield.	Weinert.

Absent.

Perkins.	Real.
Ratliff.	Sturgeon.

Absent—Excused.

Willacy.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, on motion of Senator Mayfield, the same was dispensed with.

See Appendix for standing committee reports.

SIMPLE RESOLUTION.

By Senator Weinert:

Be it resolved by the Senate, that Whereas, Mr. Finton Hall, Committee Clerk, has resigned his position to take effect Sunday, August 12, 1911, therefore be it

Resolved, by the Senate, That the name of Mr. Dodson Stamps be substituted in his place to take effect from and after said date, and the said Dodson Stamps is hereby appointed Committee Clerk in lieu of said Finton Hall.

The resolution was read and adopted.

SIMPLE RESOLUTION.

By Senator Vaughan:

Resolved by the Senate, That the letter of Hon. Jewel P. Lightfoot, Attorney General, to Horace W. Vaughan, chairman of the Senate Investigating Committee, of date August 12, 1911, relative to the powers of the said committee, be printed in the Journal for the information of the Senate.

The resolution was read and adopted.

Morning call concluded.

Following is the opinion referred to:

August 12, 1911.

Hon. Horace Vaughan, Senate Chamber, Building.

Dear Sir: We are in receipt of your letter, enclosing copy of a resolution adopted by the Senate on August 3rd, and also a copy of a resolution adopted by the Senate on August 10th, supplementing the duties and powers of the committee provided for in the original resolution, with request that we advise you as to whether the Investigating Committee provided for by said resolutions has authority to make examination into and take evidence upon the matters set forth in said resolutions and to compel the attendance of witnesses and require the said witnesses to testify.

The questions submitted being of great importance, involving as they do the power of one of the co-ordinate branches of the government, as well as the liberty of the citizens, has impelled us to make a careful and painstaking examination of all of the authorities to be had upon the subject, and while some of the questions involved are not free from

difficulty, we feel reasonably secure in the advice hereinafter given.

The first and one of the most important questions to be considered is, has the Legislature or one branch thereof the authority generally to appoint committees for the purpose of making investigations and seeking information as to any and all matters affecting any subject on which the Legislature has the right to pass laws or over which it has a right to deal in a legislative capacity, and has such a committee the legal right to summon witnesses to come before it and give testimony under oath, with power to punish a witness for contempt who has failed or refused to obey its process.

It was said by some of the older text writers upon this subject that Congress and legislative bodies generally possessed but limited legislative powers, and could not punish for contempt beyond their authority to preserve order while exercising judicial power. It was said that the commitment of one to prison for a contempt required a judicial body capable of rendering a judgment, and that to render judgment contemplated a trial which could be conducted only by a court. (See Brown on Jurisdiction, Second Edition, Section 121.) Some of the earlier cases announce the same doctrine, but in modern times it has been held almost universally that Legislatures or branches of the Legislature, as incidental to their power to enact laws, possess the inherent power to make investigations through committees appointed for that purpose.

As stated by the court in the case of Ex Parte Bunkers, 81 Pac., 751:

"Our legislators naturally gather wisdom evidenced in our system of laws from experience, and it is therefore one of the duties of citizens elected to the legislative branch of the government to gather all information, facts and data necessary to a proper performance of their duties, and thus place themselves in a position where they can give the State as nearly a perfect code of laws as human ingenuity is capable of."

It was decided by the Supreme Court of the United States in the early case of Anderson vs. Dunn, 6 Wheat, 204, that legislative bodies could punish for contempt, and this authority was not seriously questioned for nearly sixty years, and until the decision of the Supreme Court of the United States in the case of Kilbourn vs. Thompson, 103 U. S., 168, in which the court in some respects modified the doctrine announced by the earlier decision. However, the decision of the court in that case was based upon the proposition that Congress possessed only delegated powers, and could only legislate on such matters as were expressly authorized by the Constitution of the United States, or such as might be incident to the powers granted. Whereas, no such limitation applies to a State legislature which may legislate upon any subject not prohibited by the Constitution. After this case was decided some doubt seems to have arisen as to the right of the Congress, or even of the State Legislatures, in seeking such information, to punish a contumacious witness. The same court in re Chapman, 106 U. S., 661, distinguished the case of Kilbourn vs. Thompson, in some of its features, and held that a committee of the Senate had the right under a resolution of that body to require a broker to answer whether any Senator had employed the firm of which he was a member to buy or sell shares of stock, the price of which might be affected by the Senate's action. The investigation having been instituted to inquire into charges made in newspapers of bribery of Senators, the court held the subject matter of the inquiry was within the range of the constitutional powers of the Senate.

In the case of Lowe vs. Summers, 69 Mo. Appeals, 649, it is said:

"I find it asserted and uniformly conceded as a common law principle, that not only may the legislative body inflict punishment on its members who may be guilty of a contempt, but it may impose like penalties on other persons who may commit disorder in the presence of such body or who may ignore or treat with contempt its lawful process, or be guilty of such other acts before the House or its committee as will tend directly and necessarily to defeat, embarrass or obstruct its proceedings. This is a power inherent in the houses or bodies composing the legislative branch, and for the exercise thereof no express constitutional provision is required; such power exists

whether so conferred or not. Cooley's Const. Lim. (6 Ed.) 158; Black's Const. Law, 264; Rapalje on Contempts, Sec. 2; People ex rel. McDonald vs. Keeler, 99 N. Y., 463; in re Falvey vs. Massing, 7 Wis., 630; Burnham vs. Morrisey, 14 Gray, 226; Anderson vs. Dunn, 6 Wheat. (U. S.), 204."

Judge Cooley in his work on Constitutional Limitations, after conceding as the learned author does, that American legislative bodies have not the comprehensive powers in this regard as is exercised by the English Houses, says:

"As incidental to their legislative authority, they have the power to punish as contempts those acts of members or others which tend to obstruct the performance of legislative duty, or to defeat, impede or embarrass the exercise of legislative power. * * * Each house must also be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its function; and whenever it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee, with any such powers short of final legislative or judicial action as may seem necessary or expedient in the particular case. * * * A refusal to appear or to testify before such committee, or to produce books or papers, would be a contempt of the house; but the committee can not punish for contempts; it can only report the conduct of the offending party to the house for its action." (See Cooley on Constitutional Limitations, 7 Edition, page 193.)

In the case of Lowe vs. Summers, supra, the facts were as follows:

On January 15, 1897, the House of Representatives of the State of Missouri, then in session, adopted certain resolutions, reciting in effect the existence of grave charges against the police and election systems of Kansas City and St. Louis, and especially against the Board of Police Commissioners and Chief of Police of Kansas City, and declaring that "Whereas, the metropolitan police system and the election system of said cities exist by virtue of State laws, and it becomes the duty of this House to be thoroughly informed as to the actual operation of such laws, to the end that if defects therein exist the same should be corrected by adequate legislation thereon;" and thereupon said House resolved, "that a special committee of seven members of the House be appointed by the Speaker of the House to investigate fully the charges made against the said police commission and the chief of police of Kansas City, as well as the methods that have been pursued in the operation of the police and election departments of said cities and any and all defects, if any, in the police and election laws of said cities, and report to this body the results of the investigation thereon, together with such amendments or modifications of the laws thereon as they may deem necessary. And be it further resolved, that this committee have full power to send for persons and papers; that it be empowered to go to any part of the State, if deemed proper, to hold meetings and procure evidence," etc.

The committee thus provided for was duly appointed and it proceeded to Kansas City to investigate. Among other witnesses summoned before it was Lowe, the prosecuting attorney of Jackson county, Missouri. He took the ordinary oath to testify, but when asked to state to the committee whether or not, and what, if any, corrupt propositions had been made to him by the Kansas City Chief of Police respecting the administration of the law he, the said Lowe, refused to answer. Interrogatories of the same import were repeated in various forms, but the witness declined to answer. Thereupon the committee returned to the capital, and by written report, signed by its chairman, submitted in detail to the house the conduct of Mr. Lowe. The House then on January 29, 1897, adopted a further resolution, reciting at length the resolutions giving rise to the appointment of the committee, the report of the committee as to Lowe's refusal to answer certain questions, and, after declaring it the opinion of that body that such information sought was material to the investigation and that Lowe's conduct was an insult to the House, and so intended, etc.; that Lowe ought to be compelled to answer or be punished for contempt, and that he be summoned to appear at the bar of the House to show cause, etc. A copy of these last resolutions were on February 2,

1897, served on Lowe and he was summoned in accordance therewith to appear before the bar of the House on February 8, 1897, to show cause why he should not be punished for contempt. But the said Lowe in like manner declined to obey said last order, and thereupon a warrant for his arrest was by order of the House issued, and the Sergeant-at-Arms proceeded to Kansas City and took the said Lowe into custody. Thereupon he instituted a proceeding in habeas corpus, seeking to be released from the custody of the Sergeant-at-Arms. After an exhaustive review of the authorities, the court reached the conclusion that the said Lowe was guilty of such conduct as tended to embarrass and obstruct the House while pursuing a legitimate inquiry, and was therefore in contempt, and the petitioner was remanded to the custody of the Sergeant-at-Arms. In this case the court announced the following proposition:

"In view then of the foregoing authorities and the reasoning of the eminent judges there detailed, I feel secure in the position that, under the common law alone, or even in the light of the constitutional provisions generally prevailing in the States, either House of the General Assembly has the inherent right and power to punish as for a contempt an obstinate and refusing witness; and this, too, whether summoned before the House proper or before one of its committees authorized to investigate a matter pertaining or germane to the legislative duties of the House."

In the case of Ex parte Parker, 74 S. C., 466, 114 Am. St. Rep., 1011, the facts were as follows:

A committee appointed by the General Assembly of South Carolina to investigate the Dispensary Law asked Lewis W. Parker, a witness testifying before it, a question, which he refused to answer, whereupon the committee held him to be in contempt and ordered its marshal to hold him in custody until he would answer. The witness Parker then sought by habeas corpus proceedings to be released by this court from the custody of the marshal of the committee. The Senate and House of Representatives, on January 31, 1905, had passed a concurrent resolution providing for the appointment of three Senators and four members of the House to investigate the affairs of the State Dispensary. The committee was empowered to send for papers and persons, to swear witnesses, to require the attendance of any parties whose presence should be deemed necessary, to appoint an expert accountant and stenographer, and to investigate all transactions concerning said Dispensary and its management, and to take testimony either within or without the State, and have access at all times during their service to all the books and vouchers and other papers of said institution and especially to investigate as to a large number of specified matters in connection with the operation of the Dispensary of that State. Among some of the specific matters to be investigated were as follows:

"(b) Is it a fact that members of the board of directors are, or have been, agents for certain wholesale houses from which large purchases are made?"

"(g) Is it a fact that the State, through the dispensaries, is violating the Constitution of 1895, in that it is selling whisky in less quantities than one-half of one pint?"

"(j) Is it a fact that certain requirements of the law are dispensed with by the county dispensers by order of, or by the consent of, the members of the State Board of Directors?"

"(m) And any and all other matters relating to the management of the State dispensary, and of any official or person in relation thereto."

The witness Parker, while before said committee, was asked:

"Wasn't this statement that this party made to you to the effect or of the nature that he had given rebates or draft or money in some improper way or had improperly influenced this board of directors to give him business?"

The refusal to answer this question was the cause of the contempt proceedings. In passing upon the question, the court say:

"The dispensary is a public institution, created by the General Assembly, through which it undertakes to control and conduct the sale of liquor in the entire State. The principal officers of the dispensary are elected by the General Assembly and directions for its management are laid down with particularity in the statutes. The business is so enormous and the problems it presents are so novel and difficult and vital to the public welfare that not only the fullest and widest information as to the practical operations of statutes

enacted for its control, and as to the competency and honesty of its officers, is essential to wise legislative action, but it is also important that the General Assembly should be advised as to the methods used or attempted by those who deal with the dispensary by the sale of liquor or otherwise. offering a bribe to a public officer is a criminal offense under the laws of the State; and it is difficult to see any support for the position that a statement of one engaged in selling or seeking to sell to the dispensary to the effect that he had given or even offered bribes to its board of directors would be beyond the legitimate scope of legislative inquiry. It concerns the General Assembly to know of the dishonest dealings, if they exist, of those who sell to the dispensary almost as much as to know of such dealings by those who buy for it."

This court reached the conclusion that there was no ground for the interference of the court in behalf of the witness and the power of the legislative committee was fully sustained, quoting a large number of authorities.

In the case of Burnham v. Morrissey, 14 Gray, 226, 74 Am. Dec., 676, the facts were as follows: The House of Representatives of Massachusetts had ordered that a special committee be invested with general powers to investigate the affairs of the State liquor agency, with authority to send for persons and papers. This committee reported that they had notified the State Liquor Agent, Geo. P. Burnham, and that he appeared, but refused to produce a cash book and register kept by him. The House thereupon ordered the Speaker to issue his warrant to the Sergeant-at-Arms to arrest and bring him before the bar of the House to answer for a contempt in refusing to comply with the order of the committee. He having still refused to comply, the House thereupon passed an order reciting that Burnham had failed to answer the questions propounded to him by the House or to produce the books and papers required of him by the committee, and also by the House, adjudged him guilty of contempt, and ordered that he be committed by the Sergeant-at-Arms to the Suffolk county jail for twenty-five days.

In disposing of the case on habeas corpus the court say:

"The House of Representatives has many duties to perform, which necessarily require it to receive evidence and examine witnesses. It is the grand inquest for the commonwealth, and as such has power to inquire into the official conduct of all officers of the commonwealth, in order to impeachment. It may inquire into the doings of corporations, which are subject to the control of the Legislature, with a view to modify or repeal their charters. It is the judge of the election and qualification of its members. It has power to decide upon the expulsion of its members. It has often occasion to acquire a certain knowledge of facts, in order to the proper performance of legislatice duties.

"We, therefore, think it clear that it has the constitutional right to take evidence, to summon witnesses, and to compel them to attend and to testify. This power to summon and examine witnesses it may exercise by means of committees.

"If a witness duly notified or summoned by the authority of the House to attend before a committee, or before the House, refuses to attend, or when present and required to testify, or to do any other act which a witness may be lawfully required to do, refuses to obey the lawful commands of the House in that behalf, it is a contempt of the authority of the House; and upon such refusal to attend, or if such refusal to testify occur before a committee, the House may compel his obedience by arresting him by the proper officer of the House, and bringing him before the House."

The question as to the authority of the Legislature to appoint a committee to investigate matters covered by a resolution of the Senate of New York and the power of the Senate to punish a contumacious witness who refused to testify before said committee was before the highest court of New York in the case of People v. Keeler, 99 N. Y., 463, 52 Am. Rep., 49.

It appears from this case that charges of fraud and irregularity had been made by the public press and others against the commissioner of public works in the city of New York and the Senate on the 14th day of January, 1894, adopted a resolution directing and empowering its standing committee on the affairs of cities to investigate the Department of Public Works in said city, with power to send for persons and papers and to report the result of such investigation and its recommendations con-

cerning the same to the Senate. A witness being summoned to appear and testify before such committee, attended, and after having been examined at considerable length, declined to answer said questions propounded to him by the committee, and refused to be further examined, and retired from the presence of the committee without their permission.

These facts having been reported by the committee to the Senate that body directed its President to issue his warrant to the Sergeant-at-Arms commanding him to arrest the relator and bring him before the bar of the Senate to answer why he should not be punished as guilty of a contempt of its dignity and authority. The witness having failed to satisfactorily answer was by the Senate sentenced to imprisonment in the county jail of Albany county.

The court calls attention to the fact that under a statute of that State each House has the power to punish as a contempt and by imprisonment a breach of its privileges or the privileges of its members for the following offenses, among others: fourth, that of refusing to attend or be examined as a witness either before the House or by a committee to take testimony in legislative proceedings.

The opinion of the court in this case distinguishes between the Constitution of the United States and the Constitution of the State of New York and shows that the authority of the Legislature of New York is not delegated by the Constitution of that State as is the case of Congress in regard to the Federal Constitution. The court says:

"The inquiry is not whether the power to make such a law is to be found in the State Constitution but whether such Legislation is prohibited or restrained by that instrument or by the Constitution of the United States. Except as thus limited the State Legislature possesses the whole legislative power of the State."

The court further says:

"But the main ground upon which the statute is assailed is, that it confers upon each of the two houses a power which is in its nature judicial, to hear, adjudge and condemn; that no such power can be conferred by the statute upon the Legislature itself or either branch thereof; that the Constitution gives the Senate and Assembly only legislative power, and that judicial power is vested in the courts named in the Constitution, and in such inferior courts as may be created, and that the grant of judicial power to the courts is an implied prohibition of its assumption by the Legislature, except as authorized by the Constitution."

The court further discusses at length the division of powers and holds that it would be going too far to say that every statute is necessarily void which involves action on the part of either house partaking in any degree of a judicial character, if not expressly authorized by the Constitution. Where the statute relates to the proceedings of the legislative body itself and is necessary or appropriate to enable it to perform its constitutional functions, it is not regarded as an invasion of the province of the judiciary as should bring it within any implied prohibition of the State Constitution. We quote further from this opinion:

"The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has from time immemorial been deemed necessary and has been exercised by legislative bodies. In this State it does not rest upon precedent merely but is expressly conferred by statute (1 R. S., 158, Sec. 1, 2), which provides that every chairman of a committee, either of the Senate or Assembly, or of any joint committee, is authorized to administer oaths to witnesses, and when the committee is by the terms of the resolution appointing it authorized to send for persons and papers, the chairman has the power, under the direction of the committee, to issue compulsory process for the attendance of any witness within the State whom the committee may wish to examine, and to issue commissions for the examination of witnesses out of the State. To subject a witness to punishment as for a contempt, the testimony sought must, as has already been shown, relate to a legislative proceeding. 1 R. S., 154, Sec. 13, Subd. 4.

"It is difficult to conceive any constitutional objection which can be raised to the provision authorizing legislative committees to take testimony and to summon witnesses. In many cases it may be indispensable to intelligent and effectual legislation to ascertain the facts which are claimed to give rise to the necessity for such legislation and the remedy required, and irrespective of the question whether in the absence of a stat-

ute to that effect either house would have the power to imprison a recusant witness, I can not yield to the claim that a statute authorizing it to enforce its process in that manner is in excess of the legislative power. To await the slow process of indictment and prosecution for a misdemeanor might prove quite ineffectual, and necessary legislation might be obstructed, and perhaps defeated, if the legislative body had no other and more summary means of enforcing its right to obtain the required information. That the power may be abused is no ground for denying its existence. It is a limited power, and should be kept within its proper bounds, and when these are exceeded, a jurisdictional question is presented which is cognizable in the courts."

The above opinion is a very instructive discussion of this question by the court of last resort of the State of New York and the conclusions reached by this court were in direct conflict with the conclusions of the intermediate court of that State in the same case. The above case was also followed and quoted with approval by the same court in the case of People v. Sharp, 107 N. Y., 427, 1 Am. St. Rep., 851.

The Thirtieth Legislature of Texas, Session Laws of 1907, Chapter 7, page 6, enacted a statute which recognizes the right of the Legislature or either branch thereof to appoint special committees for the investigation of a great many subjects specified in said law, and, in terms, provides that any committee so appointed by the Legislature, or either branch thereof, shall have the power to investigate the matters referred to it, to administer oaths to officers, clerks and stenographers, that it may employ in connection with the performance of its duties and to any witness and parties called to testify before it, and such investigating committees shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated in answer to all pertinent questions propounded by it or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee or to answer any such pertinent questions propounded. This statute is one of the widest scope and elaborately provides for a searching and effective investigation by any committee appointed by any future Legislature or any branch thereof. If there was any question as to the inherent right of the Legislature, or either branch thereof, to appoint special committees for the purpose of making investigations and clothing such committee with the authority to summon witnesses before it (and we have shown by the authorities hereinbefore cited that there can be no serious question as to such inherent authority), this statute, passed in a regular way, with the approval of the Governor, sets at rest the question as to the authority of the Legislature, or either branch thereof, in this State in this regard.

We do not insist that the above statute would have any force and effect to give vitality or jurisdiction to a legislative investigating committee, if there is any express inhibition against such authority in the Constitution of this State. But there being no language in our Constitution which either expressly or by reasonable implication denies the right of the Legislature to appoint a special committee or to seek information for the purpose of legislation in any manner which it in its wisdom deems proper, we think it clear that the above statute is a valid exercise of legislative authority, and confers full power upon any committee appointed by the Legislature to obtain information in the manner set out in said statute. It is a rule too well established in this State to require the citation of authorities that the Legislature may pass any law or enact any legislation it may desire unless the same is prohibited by the Constitution. In other words, before the courts have a right to interfere with legislative action, they must be able to point to the language of the Constitution which prohibits the Legislature from exercising its prerogative in the given case.

From the foregoing authorities we have not a shadow of a doubt as to the authority of the Legislature of this State, or either branch thereof, to appoint a special investigating committee to seek such knowledge and information as the Legislature, or either branch thereof, may desire

upon any subject which the Legislature has the authority under the Constitution of this State to legislate upon. And we have no doubt of the authority of the Legislature, or either branch thereof, to clothe such committee with full powers to summon witnesses to appear before it and give testimony, and if any witness so summoned before such committee should fail to answer any pertinent question propounded by said committee or under its authority, or should wilfully disobey process of said committee, we think it clear that the branch of the Legislature which appointed said committee would have the right to punish such person as for a contempt.

In this connection, we call your attention to Section 15, Article 3, of the State Constitution, providing that:

"Each house may punish by imprisonment during its sessions any person not a member for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided such imprisonment shall not at any time exceed forty-eight hours."

It seems from the great weight of authority that the power to punish for contempt is lodged in the Senate or House of Representatives, and that a committee of either House has not the legal right to punish any person who disobeys the process issued by said committee. The rule seems to be that such committee would have the authority to report the facts to the body which appointed it, and the punishment, if any, must be inflicted by such body only.

The statute of the Thirtieth Legislature above referred to attempts to confer the power upon an investigating committee to fine or imprison any witness for his failure or refusal to obey process served upon him, provided that such fine shall not exceed $100.00, nor shall imprisonment extend beyond the date of adjournment of the Legislature then in session. We do not deem it necessary to pass upon the question as to whether or not this part of this statute can be enforced by the committee, but if that part of the statute which confers power on the committee to punish should fall, it would not affect the remainder of the statute which provides for the appointment of the committee and the other powers granted thereto. And by reason of the inherent power of the Legislature to punish as for a contempt, it would have all of the authority necessary to punish any contumacious witness which was brought before it on request of said committee.

It was held in the case of Lowe vs. Summers, supra, that that provision of the Constitution of Missouri which authorizes the House to arrest and punish persons for contemptuous behavior in its presence during its sessions was not an implied negation of the power to punish contempts not in the presence of the House. The court says that the power to enforce order and decorum toward a legislative body so as to insure the proper and efficient transaction of its constitutional duties, does not come under the head of power belonging to the judicial department, but is more accurately classed as a power properly belonging, incident to and inherent in the legislative body. The contention was made that this provision of the Constitution of Missouri limited the authority of the Legislature to punish in any other manner than that expressly provided in the Constitution by the well known maxim of construction expressio unius exclusio alterius. The court concludes that the Legislature possesses the inherent power to punish for contempt and that the constitutional provision did not create the power, citing Sutherland on Statutory Construction, Section 325, and Cooley Const. Limitations, 6th Ed., 75.

The next important question presented is, whether or not the committee in this instance acting under the two resolutions passed by the Senate would be prohibited from performing the duties imposed upon it and from exercising the authority granted to it because of the fact that the resolutions were passed and the committee appointed at a special session of the Legislature.

Section 40, Article 3, of the Constitution of this State provides:

"When the Legislature shall be convened in a special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session or presented to them by the Governor; and no such session shall be of longer duration than thirty days."

It will be noted that the constitutional inhibition is against legisla-

tion and no mention is made of any proceedings on the part of the Legislature short of legislation. It will not be seriously insisted that the passing of this simple resolution by the Senate and the appointment of the committee in question was legislation, as the same was not concurred in by the House and not approved by the Governor. The most that can be said is that the passing of this resolution and the appointment of this committee is for the purpose of seeking information on the part of the Senate which may or may not lead to some legislative action. It may be in aid of legislation, but the Constitution does not prohibit an inquiry in aid of legislation, nor does it follow that the inquiry could not be made because it was not in aid of legislation which this Legislature at this time may not have the right to consider, as was said in 14 Gray, 226: "The Legislature is the grand inquest of the Commonwealth." It is a permanent body invested with certain inherent powers that "may be called a visitorial or supervisorial power; but whatever its designation, it is nevertheless a power that exists, and one which ought to exist." (See Ex Parte Bunker, supra.)

Reverting back to the well established doctrine above referred to that the Legislature is clothed with large powers and can exercise its authority and perform its functions in any manner it desires unless expressly forbidden by the Constitution, there is strong reason in favor of the proposition that the above constitutional provision would have no application whatever to the action of the Senate in this particular in passing this simple resolution and appointing the committee thereunder, although it is at a special called session of the Legislature and although the information sought by the Senate may not in any remote degree have any connection with any subject which had been submitted to the Legislature by the Governor in his proclamations or messages.

It is well known that the Legislature and each branch thereof, have many of the powers and prerogatives of a regular session of the Legislature regardless of what subjects are submitted to the Legislature for its consideration.

Each branch has the inherent power of judging of the election of its members. Each branch has the authority at any time to expel one of its members for unbecoming conduct. Each branch has authority to punish for contempt and maintain order and enforce decorum. These are all inherent powers of which neither branch can be divested at any time.

The members of the Legislature are elected biennially. The Legislature is in existence at all times and the members of the House and Senate are members of the Legislature and are a part of the Legislature for the full term for which they are elected and are as much a part of the Legislature when no session is being held as they are during a session.

It is true that a regular session of the Legislature is only provided for once in two years, but the Legislature is subject to the call of the Chief Executive at any time. The members of the Legislature are clothed with the authority and it is made their duty to pass such laws as are necessary for the public welfare, and it is a strange doctrine that if it was deemed by the House or the Senate, for the public welfare, to make investigations to properly enlighten the members thereof as to the needs of the people, they should be prohibited from doing so simply because there had not been submitted to them for consideration the identical subjects which they were investigating.

However, we have after a thorough examination of the several messages and proclamations transmitted by the Governor to this Special Session of the Legislature, and of the resolutions passed by the Senate, reached the conclusion that the resolutions in question call for an investigation of matters coming fairly within the terms of the several messages and proclamations of the Governor in which he has submitted subjects to this Legislature for its consideration.

From an inspection of the legislative record, we find that the Governor has submitted the following subjects to this Legislature and authorized it to legislate thereon, to wit:

First—The subject of the general appropriation for the support of the State institutions for the two ensuing fiscal years.

Second—The subject of the redis-

tricting of the State into legislative and senatorial districts.

Third—The subject of the fixing of the tax rate of ad valorem taxes for the ensuing year, and the subject of the repeal of what is known as the automatic tax law.

Fourth—The subject of an increase of the appropriation to the Executive Department for the enforcement of the laws of this State, and in connection and as a part of the last named message, a proclamation by the Governor offering a reward of $50.00 for the arrest and conviction of any person guilty of violating certain provisions of the election laws of this State. It is well known that the subject of general and special appropriations for the support of the institutions of this State is one of the most important and difficult questions with which a legislative body has to deal and one calling for the most searching and full investigation, and the fullest and most complete information possible in order that there may be an economical administration of the government, and at the same time safeguarding the institutions of the State and insuring the enforcement of the law, one of the largest items of expense in this State is that incident to the judiciary, including the large sums of money necessary to pay the fees and salaries of the officials of this State charged with the enforcement of the laws, including the payment of witness fees in felony cases. It is not only the duty of the Legislature to familiarize itself as much as possible with the extent and nature of the violations of law in this State, but it is absolutely necessary for it to be so informed before it can intelligently provide the necessary funds for a proper enforcement of the law so as to best reach the evils which exist. Therefore, without going into a minute discussion of all of the questions involved in the general appropriation bill, it would seem that that subject alone would authorize the Senate to make the investigation called for in these resolutions. In addition to the general appropriation bill, the Governor has asked for a special appropriation, in a lump sum, of $27,500 for the Executive Department, to be used in the enforcement of the law, which amount is nearly four times as much as that heretofore appropriated for that purpose. The purposes expressly stated by the Governor as a basis for this large increase in this item are the alleged violations of the election laws of this State, and especially in the illegal issuance and use of poll tax receipts. It appears further, that the Governor has been so impressed with the probable truth of such charges that he has, in a proclamation, offered a reward of $50.00 for the apprehension and conviction of any person violating these laws and requested this appropriation in order to enable him to comply with the terms of his proclamation. It is certainly within the power of the Legislature to conduct this investigation in order to ascertain whether there exists sufficient ground to call for such a large and unusual appropriation, in a lump sum, to the Executive, to be used for such purposes, and to ascertain further whether or not the amount requested is adequate to effect the complete enforcement of these laws and to pay such rewards with a view to making any additional appropriation which may be necessary to execute the laws of this State.

The subject of fixing the ad valorem tax rate is closely connected with the subject of appropriations and authorizes such an investigation, likewise the subject of redistricting the State for senatorial purposes afford the same basis of authority.

The resolutions hereinbefore referred to authorize the investigating committe to make:

"1. A full, complete and comprehensive investigation into any violations of the election laws of this State and any election frauds committed, and especially in regard to the election held in this State on July 22nd of this year on the constitutional amendment prohibiting the manufacture and sale of intoxicating liquors, and to further inquire into the employment, if any, of any member or members of the Senate to use his influence to secure the adoption or defeat of said constitutional amendment.

"2. To inquire into any violations of the election law.

"3. To inquire into and ascertain whether any poll tax receipts have been fraudulently issued."

The purposes as stated in the resolutions being to elicit all the facts and information concerning such matters for the use and benefit of this Legislature in enacting any leg-

islation deemed necessary on the subjects now pending before the Legislature or which may properly come before this session or any future called session of the Legislature, or any subsequent Legislature, in passing such remedial legislation as should be necessary to maintain, safeguard and protect the purity, freedom and honesty of the ballot and uncorrupted independence of the voters, and for the purpose of ascertaining the amount of money necessary to be appropriated by this Legislature for the enforcement of the law and to enable the Governor to pay the rewards offered and to ascertain the correct basis for redistricting this State as provided by law.

The purposes specified in said resolutions come fairly within the purview and language of the subjects submitted by the Governor for legislation, and this being true, under the authorities hereinbefore cited and quoted from, the investigating committee has full power and authority to compel the attendance of witnesses and compel them to testify upon any matter pertinent or material to the subjects under investigation, and have any witness punished for contempt by the Senate who should fail or refuse to obey the processes of said committee.

The great weight of authority sustains the proposition that the Legislature, a co-ordinate and independent branch of the government, is vested with a wide discretion as to the scope, range and extent of investigations over matters upon which they have the power to legislate, who must be permitted to pursue their investigation in their own way, unrestricted and unhampered by any outside force, or by any other co-ordinate branch of the government; that they alone are the judges of the necessities of the investigation and the data and information required to enable them to intelligently act upon such matters as may be before them for legislation.

It would be a most delicate matter for any court to undertake to draw the line limiting the right of the legislature to seek information for its guidance and trenching upon the wide discretion of such body to govern itself. This doctrine has been sustained by the Supreme Court of the United States in the case of In re Chapman, 166 U. S., 661. That case involved the authority of a committee of the United States Senate to investigate matters to be used by the Senate in consideration of a tariff bill. The resolutions directed the committee to inquire "whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." Mr. Chief Justice Fuller, rendering the opinion for the court, upheld the authority of the Senate committee to require the witness to answer whether the firm of which he was a member had bought or sold what were known as sugar stocks during the month of February, 1894, and after the first day of that month for or in the interest, directly or indirectly, of any United States senator. The court said:

"What the Senate might or might not do upon the facts when ascertained, we can not say, nor are we called upon to inquire whether such ventures might be defensible as contended in argument, but it is plain that negative answers would have cleared that body as to what the Senate regarded as offensive imputations, while affirmative answers might have led to affirmative action on the part of the Senate within its constitutional powers. Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolutions did not specify that the proceedings were taken for the purpose of censure or expulsion if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate. The resolutions adequately indicated that the transactions referred to were deemed by the Senate reprehensible and deserving of condemnation and punishcluded. * * * We can not assume on this record that the action of the Senate was without a legitimate object and so encroach upon the province of that body. Indeed, we think it affirmatively appears that the Senate was acting within its right and it was certainly not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation concluded. * * We grant that Congress could not divest itself or either of its Houses of the essential and inherent power to punish for

contempt in cases to which the power of either house properly extended."

The great importance of the questions submitted by your committee has made it necessary to discuss these questions at greater length than is usually customary. A careful consideration of the authorities quoted, and others which have not been cited for lack of space, convince us of the soundness of the conclusions herein expressed. Indeed, there are many precedents in this and other States to support the power of the Legislature or either branch thereof to investigate matters pertaining to the public welfare with a view to correcting, by legislation, any and all evils discovered thereby, and such authority has not been seriously questioned. Moreover, the exercise of such power has been a potent instrument to gather information and correct evils found to exist. One of the most effective safeguards against corruption in the government and pollution of the ballot is to be found in turning the light of investigation upon such practices. It may be said that the preservation of the rights and liberties of the people, the purity of the ballot and the untrammeled expression of the public will depend upon the detection and exposure of crime and corrupt practices, and to that end it would be unfortunate should such a potent instrument as an investigating committee of either branch of the Legislature be destroyed or be restricted in the exercise of its proper powers when in their judgment the public weal demands it.

Yours very truly,
JEWEL P. LIGHTFOOT,
Attorney General.

SENATE BILL NO. 2—HOUSE AMENDMENTS CONCURRED IN.

Senator Cofer called up, as a privilege matter

Senate bill No. 2, A bill to be entitled, "An Act making appropriation to defray the contingent expenses of the First Called Session of the Thirty-second Legislature of the State of Texas, convened July 31, 1911, by proclamation of the Governor, and declaring an emergency," with the following House amendments:

Amend the bill by striking out the words "thirty thousand dollars" wherever they occur, and insert in lieu thereof the words "twenty thousand dollars."

Senator Cofer moved that the Senate concur in the above House amendments.

The motion was adopted by the following vote:

Yeas—13.

Bryan.	McNealus.
Carter.	Terrell, Wise.
Cofer.	Townsend.
Collins.	Vaughan.
Johnson.	Ward.
Lattimore.	Warren.
Mayfield.	

Nays—10.

Adams.	Meachum.
Astin.	Paulus.
Hudspeth.	Peeler.
Hume.	Terrell, McLennan
Kauffman.	Watson.

Absent.

Perkins.	Real.

PAIRED.

Senator Greer (present), who would vote "yea," with Senator Willacy (absent), who would vote "nay."

Senator Weinert (present), who would vote "nay," with Senator Ratliff (absent), who would vote "yea."

Senator Murray (present), who would vote "nay," with Senator Sturgeon (absent), who would vote "yea."

Senator Cofer moved to reconsider the vote by which the amendments were concurred in, and lay that motion on the table.

The motion to table prevailed.

SENATE BILL NO. 7.

The Chair laid before the Senate, on second reading,

Senate bill No. 7, A bill to be entitled "An Act to repeal Chapter 98, Acts of the Twenty-ninth Legislature, Regular Session, and Chapter 13, Acts of the First Called Session of the Twenty-ninth Legislature, known as the Automatic Tax Law."

On motion of Senator Hudspeth, the above bill was made a special order for tomorrow after the morning call, and that same be printed in the Journal.

Following is the bill in full:

By Hudspeth: S. B. No. 7.

A BILL
To Be Entitled

An Act to repeal Chapter 98, Acts of the Twenty-ninth Legislature, Regular Session, and Chapter 13, Acts of the First Called Session of the Twenty-ninth Legislature, known as the Automatic Tax Law.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Chapter 98 of the Acts of the Twenty-ninth Legislature, Regular Session, and Chapter 13, Acts of the Called Session of the Twenty-ninth Legislature, known as the Automatic Tax Law, is hereby and in all things repealed.

Sec. 2. Owing to the fact that the tax rate for the State can not be intelligently fixed under the present Automatic Tax Law, and owing to the fact that the State is now almost confronted with a deficiency which necessitates the raising of the tax rate, creates an emergency and an imperative public necessity, necessitating that the constitutional rule requiring bills to be read upon three several days, be suspended, and it is hereby suspended, and that this bill take effect from and after its passage.

SENATE BILL NO. 8.

The Chair laid before the Senate, on second reading,

Senate bill No. 8, A bill to be entitled "An Act making appropriations for the deficiencies in the appropriations heretofore made for the support of the State Government for claims registered and estimated in the Comptroller's office and appropriations for positions created by the Thirty-second Legislature for the fiscal year ending August 31, 1911, and declaring an emergency."

Senator Weinert moved that the further consideration be postponed until tomorrow morning, and that the bill be printed in the Journal.

The motion prevailed and following is the bill in full:

By Weinert: S. B. No. 8.

A BILL
To Be Entitled

An Act making appropriations for the deficiencies in the appropriations heretofore made for the support of the State Government for claims registered and estimated in the Comptroller's office, and appropriations for positions created by the Thirty-second Legislature for the fiscal year ending August 31, 1911, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That the following sums, or so much thereof as may be necessary, be and the same are hereby appropriated out of any money in the State Treasury, not otherwise appropriated, for deficiencies in the support of the State Government, for claims registered and estimated in the Comptroller's office and appropriation for positions created by the Thirty-second Legislature for the fiscal year ending August 31, 1911, and contracted under the provisions of Chapter 46, Acts of the Twenty-fifth Legislature, and of Articles 1089 and 1093 of the Code of Criminal Procedure, and to make additional appropriations therefor.

Deficiencies approved by the Governor for the year ending August 31, 1911:

DEPARTMENT OF INSURANCE AND BANKING.

Postage, stationery, telegraphing and express for fiscal year ending August 31, 1911....	$ 1,800.00

COMMISSIONER OF PENSIONS.

Stationery, postage and contingencies	200.00

STATE MINING BOARD.

Traveling expenses for inspector	300.00

STATE LUNATIC AYSLUM.

Repairs for two years ending August 31, 1911	1,500.00
Support and maintenance year ending August 31, 1911	15,000.00

DEPARTMENT OF EDUCATION.

Printing and distributing county superintendent's records, etc.	1,600.00

PURE FOOD COMMISSION.

Traveling and all other expenses ..... $ 250.00

BLIND INSTITUTE.

Groceries, provisions, supplies, etc. 2,500.00

CONFEDERATE HOME.

Groceries, fuel, light, water, etc. 11,000.00

DEPARTMENT OF AGRICULTURE.

Stationery, postage, express and telegraphing.. 500.00

MANSION AND GROUNDS.

Fuel and lights 150.00

EXECUTIVE OFFICE.

Freight, postage and telegraphing 200.00

PUBLIC PRINTING.

First, second and third-class printing, binding, etc. 15,000.00

DEAF AND DUMB INSTITUTE.

Supplies and provisions.. 3,500.00

EXPERIMENT STATIONS.

Establishing additional experimental stations ... 3,000.00

COMPTROLLER'S OFFICE.

Contingent expenses 50.00

SOUTHWESTERN INSANE ASYLUM.

Support and maintenance, etc., for additional patients 8,800.00

ATTORNEY GENERAL'S OFFICE.

Stationery, postage, telegraphing, etc. 200.00

GENERAL LAND OFFICE.

Surveying State lands two years ending August 31, 1911 ..... 1,200.00

PUBLIC BUILDINGS AND GROUNDS.

Labor, material, Capitol grounds, etc. ..... $ 1,000.00

Total $67,750.00

For accounts filed in Comptroller's office for which no deficiencies have been approved:

Interest on public debt for year ending August 31, 1911 ..... $ 21,077.50

To pay salaries for special judges:
Registered .$2,373.29
Estimated .. 1,626.71 4,000.00

To refund unearned portion of liquor dealers' licenses in local option territories:
Registered .$1,200.00
Estimated .. 8,800.00 10,000.00

Fees and costs of sheriffs, clerks and attorneys in felony cases — estimated 6,000.00

Fees of county judges, county attorneys, justices of the peace, sheriffs and constables in examining trials—estimated 4,000.00

COMPTROLLER'S OFFICE.

Postage, express, telephone and telegraph, and office furniture—estimated .. 300.00

ACTS OF THE THIRTY-SECOND LEGISLATURE

Creating positions for which said Legislature failed to make appropriations for the fiscal year ending August 31, 1911:

Salaries of district judges of the Seventy-first and Seventy-third Judicial Districts from June 11, 1911, to August 31, 1911 ..... 1,333.33

Salary of district judge of the Seventy-second Judicial District from March 25, 1911, to August 31, 1911..... 1,308.33

Salaries of the six judges of the Seventh and Eighth Courts of Civil Appeals from June 11,

1911, to August 31, 1911	$ 4,666.56
Total	$52,685.72
Grand total	$120,735.72

Section 2. Whereas, there are no appropriations to pay claims against the State herein provided for, which are outstanding and are legal claims against the State, creates an emergency and an imperative public necessity which justifies the suspension of the constitutional rule requiring bills to be read on three several days in each House, and this Act take effect and be in force from and after its passage, and it is so enacted.

HOUSE BILL NO. 3.

The Chair laid before the Senate on second reading and regular order,

House bill No. 3, A bill to be entitled "An Act making appropriation to defray the contingent expenses of the First Called Session of the Thirty-second Legislature of the State of Texas, convened July 31, 1911, by proclamation of the Governor, and declaring an emergency."

On motion of Senator Terrell of McLennan, the bill was laid on the table subject to call.

EXCUSED.

On account of sickness:

Senator Perkins, from time not excused and for an indefinite time, on motion of Senator Peeler.

RECESS.

Senator McNealus, at 10:30 o'clock a. m., moved that the Senate recess until 4 o'clock today.

The motion prevailed.

AFTER RECESS.

The Senate was called to order by Lieutenant Governor Davidson.

MESSAGE FROM THE GOVERNOR.

Executive Office,
Austin, Texas, Aug. 14, 1911.

To the Texas Legislature:

As provided by Section 40, Article 3, of the State Constitution, I present to the Legislature the following additional subjects for legislation, and recommend the passage of bills covering same:

1. Prescribing a uniform system of text-books for use in the public schools of the State.

2. For the relief of the Supreme Court by prescribing and fixing its jurisdiction.

3. Providing for the appointment of a commission of five competent lawyers, who shall sit at Austin, for the purpose of reforming and revising our civil and criminal codes and our court procedure; prescribing adequate compensation for the services of members of said commission, who shall devote their entire time to this work until the same is completed.

Respectfully submitted,
O. B. COLQUITT,
Governor of Texas.

BILL ON FIRST READING.

(By Unanimous Consent.)

By Senators Ward, Sturgeon, Hudspeth, Terrell of Wise and Cofer:

Senate bill No. 11, A bill to be entitled "An Act to provide for the adoption of a system of uniform text-books in this State and the appointment of a Text-book Board for such purpose; to authorize the adoption of text-books and the selection and adoption of other books, and to provide for a Board of Revision to keep the adopted books revised and up to date; to prohibit lobbying before the Text-book Board by legal and special representatives of authors or publishers; to prescribe rules and regulations for the Board in entering into contracts on behalf of the State; to prescribe penalties for violation of the provisions of this Act; to make an appropriation to carry into effect the provisions hereof, and declaring an emergency."

Read first time and referred to Committee on Educational Affairs.

BILLS SIGNED.

The Chair (Lieutenant Governor Davidson) gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read the following bill and concurrent resolution:

Senate Concurrent Resolution No. 2, inviting the International Typographical Union to hold its next annual meeting in Houston.

Senate bill No. 2, A bill to be entitled, "An Act making appropriation to defray the contingent expenses of the First Called Session of the Thirty-second Legislature of the State of Texas, convened July 31, 1911, by proclamation of the Governor, and declaring an emergency."

ADJOURNMENT.

On motion of Senator Cofer the Senate, at 4:10 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

APPENDIX.

COMMITTEE REPORT.

Committee Room,
Austin, Texas, Aug. 14, 1911.

Hon. A. B. Davidson, President of the Senate.

Sir: Your Committee on Engrossed bills have carefully examined and compared

Senate bill No. 3, A bill to be entitled "An Act making appropriations for the support of the State government for two years, beginning September 1, 1911, and ending August 31, 1913, and for other purposes, and prescribing certain regulations and restrictions in respect thereto; to make additional appropriations for the support of the State government for two years ending August 31, 1911, and to pay various miscellaneous claims against the State, and declaring an emergency."

And find it correctly engrossed.

COFER, Chairman.

THIRTEENTH DAY.

Senate Chamber,
Austin, Texas,
Tuesday, Aug. 15, 1911.

The Senate met pursuant to adjournment, and was called to order by Lieutenant Governor Davidson.

Roll called, quorum being present, the following Senators answering to their names:

Adams.	Hudspeth.
Astin.	Hume.
Bryan.	Johnson.
Carter.	Kauffman.
Cofer.	Lattimore.
Collins.	Mayfield.
Greer.	McNealus.
Meachum.	Townsend.
Murray.	Vaughan.
Paulus.	Ward.
Peeler.	Warren.
Ratliff.	Watson.
Real.	Weinert.
Terrell, Wise.	

Absent.

Sturgeon.

Absent—Excused.

Perkins.	Willacy.
Terrell, McLennan	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, on motion of Senator Mayfield the same was dispensed with.

See Appendix for standing committee reports.

BILLS AND RESOLUTIONS.

By Senator Vaughan:

Senate bill No. 12, A bill to be entitled "An Act to regulate proceedings upon application for writs of error from courts of Civil Appeals to the Supreme Court."

Read first time, and referred to Committee on Judiciary No. 1.

Morning call concluded.

By unanimous consent and referred by Senator Peeler

By Senator Johnson:

Senate bill No. 13, A bill to be entitled "An Act to amend Article 941, as amended by the Act of April 30, 1901, of the Revised Civil Statutes of Texas, defining the original and appellate jurisdiction of the Supreme Court, and to provide for disposition of the causes now pending therein, and declaring an emergency."

Read first time, and referred to Committee on Judiciary No. 1.

By unanimous consent and referred by Lieutenant Governor Davidson.

By Senator Warren:

Senate bill No. 14, A bill to be entitled "An Act to create and establish a commission for revising, systematizing and reforming the laws of the State of Texas, and for the appointment of the members of said commission, to be known as 'The Commissioners for the Revision and Reform of the Laws of Texas,' and to prescribe their powers and duties; and to authorize the appointment of a secretary and stenographer there-